

Serial No.: 09/847,941

Confirmation No.: 6157

Filed: 2 May 2001

For: TAPERED STRETCH REMOVABLE ADHESIVE ARTICLES AND METHODS

Remarks

The Office Action mailed 17 April 2003 has been received and reviewed. Claim 7 has been amended, thus leaving claims 1-61 pending. Reconsideration and withdrawal of the rejections are respectfully requested.

Drawings

Replacement drawing sheets 3/5 and 4/5 are submitted with this response. The replacement drawing sheets address the issues raised by the Examiner on page 2 of the Office Action. Namely, reference number "80" now appears in FIG. 8 and reference number "412" now appears in FIG. 14. Applicants submit that no new matter is added.

Approval and entry of these replacement drawing sheets are respectfully requested.

Specification

Amendments to the specification as suggested in the Office Action have been presented to address the typographical errors identified by the Examiner. Applicants have also corrected a typographical error found on page 34, line 24 (where "90" should have been "90'").

Approval and entry of these amendments are respectfully requested.

Claim Objections

Claim 7 has been amended to add a period, thus correcting a typographical error in the claim as presented. Applicants respectfully submit that this amendment does not narrow the scope of the claim in any respect.

Reservation of Right to Remove References

Applicants note that Visintainer (U.S. Patent No. D 454,956) is cited in support of a number of rejections presented in this Office Action. Applicants further note that Visintainer is currently a reference only under 35 U.S.C. § 102(e), but has a filing date less than two weeks before the filing date of the present application. Applicants expressly reserve the right to remove

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Visintainer as a reference in the future by proving an earlier date of invention, but will address the rejections citing Visintainer in the interests of expediency.

Applicants also note that Reidel et al. (U.S. Patent No. 6,133,173) is cited in support of a number of rejections presented in this Office Action. Applicants further note that Reidel et al. is currently a reference under 35 U.S.C. § 102(a), but has an issue date less than one year before the filing date of the present application. Applicants expressly reserve the right to remove Reidel et al. as a reference in the future by proving an earlier date of invention, but will address the rejections citing Reidel et al. in the interests of expediency.

Allowable Subject Matter

Applicants thank the Examiner for notification to the effect that claim 23 is allowable and that claims 13-18, 52, 55, and 58 would be allowable if rewritten in independent form.

Obviousness-Type Double Patenting Rejection

Claims 1-3, 5-7, 12, 24-27, 37-40, 50-51, 53, 54, 56, 57, and 59-61 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30, and 51 of U.S. Patent Application No. 09/934,450.

Claims 4, 8-11, 28-32, and 41-45 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of U.S. Patent Application No. 09/934,450 in view of Visintainer (U.S. Patent No. D 454,956) and Curad, Extreme Shapes™, Bandages for fingertip, elbow/knee, or knuckle, Beiersdorf Inc., Wilton, CT 06897 (2000)(Photocopy of Packaging) ("Curad").

Claims 19-22, 33-36, and 46-49 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 12, 19, and 28 of U.S. Patent Application No. 09/934,450 in view of Visintainer (U.S. Patent No. D 454,956).

Upon an indication of otherwise allowable subject matter and in the event these rejections are maintained, Applicants will provide an appropriate response.

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Applicants note, however, that claims 12, 50, 51, 53, 54, 56, and 57 are not subject to any other rejections and that the double patenting rejection of these claims is based on pending U.S. Patent Application No. 09/934,450 which is neither allowed nor issued. As a result, Applicants respectfully request notice to the effect that these claims are allowable as presented in the present application.

Of that group, claims 50, 53 and 56 are all independent claims. As a result, Applicants respectfully submit that independent claim 50 and its dependent claims 51 & 52, independent claim 53 and its dependent claims 54 & 55, and independent claim 56 and its dependent claims 57 & 58 are all allowable as presented. Thus, Applicants respectfully submit that claims 50-58 should properly be indicated as allowable in the next communication from the Office.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claim 2 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner alleges that, with respect to claim 2, the boundaries of the included angle alpha conflict with the boundaries set forth in the claims from which it depends. More specifically, "about 90 degrees or less" is in conflict with "about 30 degrees or more", and is unclear what the minimum and maximum range of the included angle are.

Applicants respectfully disagree with this rejection. Claim 1, from which claim 2 depends, provides an upper limit for the included angle defined by the two edges (i.e., "about 90 degrees or less"). Claim 2 recites a lower limit for that included angle of "about 30 degrees or more." When read together, the two recitations define a range for the included angle of about 30 degrees to about 90 degrees. In the absence of claim 2, the lower limit for the included angle is essentially some angle greater than zero degrees. The upper and lower limits for the included angle are also described separately in the specification at page 38, lines 10-18 of the specification.

In view of the above, Applicants submit that one of ordinary skill in the art would not find the separate recitation of the upper and lower limits for a range to be indefinite. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

The 35 U.S.C. §103 Rejections

Claims 1-3, 5-7, 24-27, and 37-40:

Claims 1-3, 5-7, 24-27, and 37-40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Visintainer (U.S. Patent No. D 454,956) in view of Korpman (U. S. Patent No. 4,024,312). Applicants respectfully disagree with this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves or the knowledge generally available to one skilled in the art to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations (M.P.E.P §2143).

Applicants respectfully submit that this rejection does not satisfy the requirements for a proper *prima facie* obviousness rejection because one of ordinary skill in the art would not be motivated to modify the teachings of Visintainer with Korpman as asserted.

Visintainer discloses a variety of designs for adhesive bandages. Korpman discloses a pressure sensitive adhesive tape with a highly extensible and elastic backing that imparts stretch removability to the tape (as the backing is stretched).

Applicants respectfully submit that the asserted motivation to modify the constructions of Visintainer with Korpman to reach the claimed invention ("in order to provide ouchless removal of the bandage") is arrived at only with the use of impermissible hindsight. As a result, the asserted motivation is not supported by the references and a proper *prima facie* case of obviousness has not been presented.

Korpman teaches that ouchless removal is achieved by stretching a tape that has a blunt, rectangular end. Nowhere does Korpman suggest that other geometric configurations would or

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could provide for "ouchless" removal from skin by stretching. As a result, any assertion to that effect is not supported by the references.

In view of the above, Applicants respectfully submit that the motivation requirement for a *prima facie* case of obviousness has not been met. In addition, the combination of Korpman and Visintainer does not teach or suggest all of the limitations recited in rejected claims 1-3, 5-7, 24-27, and 37-40.

Independent claims 1, 24 and 37 all recite "stretch removable pressure sensitive adhesive" on a backing. The application further defines "stretch removable" pressure sensitive adhesive as follows:

"Stretch removable" means that a pressure sensitive adhesive or article, when pulled and elongated (preferably from a substrate surface at a rate of 30 centimeters/minute and at an angle of no greater than 45°) detaches from a substrate surface without significant damage to the substrate surface (e.g., tearing), and without leaving a significant residue, preferably that which is visible to the unaided human eye on the substrate.

Specification, p. 9, lines 18-23.

In other words, the meaning of the phrase "stretch removable pressure sensitive adhesive" requires removal "without leaving a significant residue" on a surface. Korpman does not teach or suggest this feature. In fact, Korpman is silent as to whether any adhesive is removed along with the backing of the tapes disclosed therein.

With respect to, e.g., claims 5, 26, and 39, Applicants submit that the requirements of a *prima facie* case of obviousness have not been met. Each of these claims recites that the terminal portions are connected to the central portion of the article by a leg. The only support for the rejection of claim 5 is "note the Figs. Of Visintainer." Applicants respectfully submit that this assertion is inadequate to support a proper case of *prima facie* obviousness. No discussion is provided as to which features are considered "legs" for the purposes of this rejection of claims 5, 26, and 39.

With respect to claims 24, 25, 37, and 38, it is indicated in the Office Action that the recited limitations are "an obvious design choice" that do not support patentability "[a]bsent a

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teaching as to the criticality" of the limitations. Applicants respectfully submit that the application as filed does provide the requested "criticality" to support patentability.

It is noted in the application that the "tapered terminal portions may provide control over the release properties of the article to a surface, e.g., skin. Such control may be especially helpful as the stretch removable adhesive article reaches the point of complete detachment from a surface. It is at that point that the adhesive forces on the substrate may be acting in shear and it may be desired to limit shear forces on some substrates, e.g., skin and other shear-sensitive surface." Specification, p. 2, lines 21-26. Furthermore, in the description of the features recited in these claims (*see, e.g.*, Specification, p. 42, line 29 through p. 43, line 22), the features recited in the claims are described as "preferred" - thus indicating that the recited features may be considered critical to attaining the advantages of the invention.

Finally, these statements all have the benefit of the declaration of inventorship indicating that the inventor "reviewed and understand" the specification and the claims. The inventor also declared "that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true." *Declaration, Power of Attorney, and Petition*, (signed August 9, 2001). As a result, the criticality of these features is established within the application as filed.

In view of the above, Applicants respectfully submit that the combination of Visintainer and Korpman does not support a *prima facie* case of obviousness with respect to claims 1-3, 5-7, 24-27, and 37-40. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 4, 8-11, 28-32, and 41-45:

Claims 4, 8-11, 28-32, and 41-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Visintainer (U.S. Patent No. D 454,956) in view of Korpman (U. S. Patent No. 4,024,312) as applied to claim 1 above, and in further view of Curad, Extreme Shapes™, Bandages for fingertip, elbow/knee, or knuckle, Beiersdorf Inc., Wilton, CT 06897

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(2000)(Photocopy of Packaging) ("CURAD"). Applicants respectfully disagree with this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves or the knowledge generally available to one skilled in the art to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations (M.P.E.P §2143).

Applicants note that all of the rejected claims 4, 8-11, 28-32, and 41-45 depend from independent claims 1, 24, or 37. Applicants further note that these independent claims are patentable for the reasons discussed herein. For that reason alone, Applicants respectfully submit that this rejection of claims 4, 8-11, 28-32, and 41-45 does not satisfy the requirements for a proper *prima facie* obviousness rejection.

Furthermore, Applicants note that the proposed interpretation of the CURAD reference is not supported by the reference itself. For example, it is indicated that the CURAD reference teaches radiused tips as recited in claims 4, 28, and 41. However, the portions of the bandages indicated as the "edges" in Exhibit 1 of the Office Action do not converge toward a tip in a manner that would meet any of the requirements in independent claims 1, 24 and 37 (from which claims 4, 28 and 41 respectively depend). If this rejection is maintained, Applicants respectfully request that some analysis be presented for each of these claims to address the inconsistencies between the constructions of Visintainer and CURAD (with Applicants noting that the suggested modification may well fall within the proscribed arena of a modification that changes the basic principle upon which the invention operates).

Applicants further traverse the assertion that the inclusion of radiused tips "is merely a matter of engineering design choice." Rather, Applicants note that the specification indicates that inclusion of radiused tips may "resist unwanted detachment from a surface." Specification, p. 42, line 18.

With respect to claim 8, Applicants traverse the assertion that CURAD teaches "only one pair of opposing terminal portions" as set forth in the Office Action. No figure or portion of the

CURAD reference is cited in support of this assertion. Applicants thus respectfully request further explanation of the rejection of claim 8 based on Visintainer in view of Korpman and further in view of CURAD.

For the above reasons, Applicants respectfully submit that the combination of Visintainer, Korpman and CURAD does not support a *prima facie* case of obviousness with respect to claims 4, 8-11, 28-32, and 41-45. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 19-21, 33-35, and 46-48:

Claims 19-21, 33-35, and 46-48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Visintainer (U.S. Patent No. D 454,956) in view of Korpman (U. S. Patent No. 4,024,312) as applied to claims 1, 10, 24, and 37 above, and in further view of Riedel et al. (U.S. Patent No. 6,133,173). Applicants disagree with this rejection and the assertions presented in support thereof.

Applicants note that all of rejected claims 19-21, 33-35, and 46-48 depend from independent claims 1, 24, or 37. Applicants further note that these independent claims are patentable for the reasons discussed herein. For that reason alone, Applicants respectfully submit that this rejection of claims 19-21, 33-35, and 46-48 does not satisfy the requirements for a proper *prima facie* obviousness rejection.

In addition, there is no explanation as to why the asserted motivation for making the proposed modification, i.e., "a substantial increase in the shear strength of the adhesive layer," is a desirable feature for a "stretch removable pressure sensitive adhesive" as recited in the rejected claims. This is particularly germane in view of the fact that the present invention was developed, in part, as an attempt to manage shear forces to reduce trauma to e.g., skin and other sensitive surfaces. *See, e.g.*, Specification, p. 2, lines 21-26. Thus, the asserted motivation may well provide a reason as to why the cited references should not be combined as proposed.

Furthermore, Riedel et al. recites a nonwoven cohesive wrap that is "formed into a roll form without the use of release liners or release coatings yet still results in a roll of coherent

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material such that can be easily dispensed without blocking, tearing, or cohesive failure (e.g., splitting of the fibrous web or wrap) of the wrap" (Col. 10, lines 32-37). This leads to a nonwoven cohesive wrap that "is coherent such that it can be dispensed, wound on itself and unwound or removed without the wrap tearing, splitting, or the like" (Col. 10, lines 59-61). As indicated by Riedel et al., cohesive wraps are those that stick to themselves rather than to other materials. In contrast, a pressure sensitive adhesive, as recited in the rejected claims, "is that it is aggressively and permanently tacky at room temperature and firmly adheres to a variety of dissimilar surfaces upon mere contact without the need of more than finger or hand pressure, and which may be removed from smooth surfaces without leaving a residue . . ." Specification, p. 15, lines 24-28.

The cited documents, however, fail to provide motivation as to why one of ordinary skill in the art would replace the fibers of the nonwoven cohesive wrap, having both pressure-sensitive adhesive fibers and non-pressure sensitive adhesive fibrous material commingled with the pressure-sensitive adhesive fibers, as recited in Riedel et al. with the pressure sensitive adhesive fibers, as recited in the rejected claims. There must be a suggestion or teaching in the prior art that Applicants' claimed invention could or should be prepared. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (C.A.F.C. 1991); In re O'Farrell, 853 F.2d 894, 7 U.S.P.Q.2d 1673 (C.A.F.C. 1988).

It appears that it is only in hindsight, i.e., picking and choosing among the disclosures of the cited art with knowledge of Applicants' disclosure, that the Examiner can arrive at the conclusion that Applicants' invention is obvious. Therefore, there is no combination of the cited documents that are available as prior art that render Applicants' invention obvious.

For the above reasons, Applicants respectfully submit that the combination of Visintainer, Korpman and Reidel et al. does not support a *prima facie* case of obviousness with respect to claims 19-21, 33-35, and 46-48. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 22, 36, and 49:

Claims 22, 36, and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Visintainer (U.S. Patent No. D 454,956) in view of Korpman (U. S. Patent No. 4,024,312) and Reidel et al. (U.S. Patent No. 6,133,173) as applied to claims 19, 33, and 46 above, and further in view of Joseph et al. (U.S. Patent No. 5,238,733). Applicants disagree with this rejection and the assertions presented in support thereof.

Applicants note that all of rejected claims 22, 36, and 49 depend from independent claims 1, 24, or 37. Applicants further note that these independent claims are patentable for the reasons discussed herein. For that reason alone, Applicants respectfully submit that this rejection of claims 22, 36, and 49 does not satisfy the requirements for a proper *prima facie* obviousness rejection.

Applicants also note that all of rejected claims 22, 36, and 49 depend from independent claims 19, 33, or 46. Applicants further note that these claims are patentable for the reasons discussed in the previous section. For that reason alone, Applicants respectfully submit that this rejection of claims 22, 36, and 49 does not satisfy the requirements for a proper *prima facie* obviousness rejection.

Furthermore, the Office Action does not address why one of skill in the art would couple the teachings of Reidel et al. (a cohesive wrap that does not include a separate backing) with a nonwoven web backing of Joseph et al. in a shape that is based on Visintainer modified by Korpman. For example, no reasoning is provided as to why one of ordinary skill in the art would add a backing to a cohesive wrap material that was developed to eliminate the need for a separate backing layer. In essence, this rejection proposes modifications that would change the principle of operation of the inventions being modified. As a result, there is no motivation to combine/modify as required for a proper *prima facie* case of obviousness.

It appears that it is only in hindsight, i.e., picking and choosing among the disclosures of the cited art with knowledge of Applicants' disclosure, that the Examiner can arrive at the conclusion that Applicants' invention is obvious. Therefore, there is no combination of the cited documents that are available as prior art that render Applicants' invention obvious.

For the above reasons, Applicants respectfully submit that the combination of Visintainer, Korpman and Reidel et al. does not support a *prima facie* case of obviousness with respect to claims 22, 36, and 49. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claim 59:

Claim 59 was rejected under 35 U.S.C. §103(a) as being unpatentable over Korpman (U.S. Patent No. 4,024,312) in view of Visintainer (U.S. Patent No. D 454,956). Applicants respectfully disagree with this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves or the knowledge generally available to one skilled in the art to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations (M.P.E.P §2143).

Applicants respectfully submit that this rejection does not satisfy the requirements for a proper *prima facie* obviousness rejection because one of ordinary skill in the art would not be motivated to modify the teachings of Korpman with Visintainer as asserted.

Korpman discloses a pressure sensitive adhesive tape with a highly extensible and elastic backing that imparts stretch removability to the tape (as the backing is stretched). Visintainer discloses a variety of designs for adhesive bandages.

Applicants respectfully submit that the asserted motivation to modify the constructions of Korpman to reach the claimed invention ("for ornamental purposes") is arrived at only with the use of impermissible hindsight. As a result, the asserted motivation is not supported by the references and a proper *prima facie* case of obviousness has not been presented.

As discussed in the present application, the claimed geometric configurations of the tapered terminal portions address a problem that was not even recognized by Korpman, namely the concentration of shear forces at the ends of an adhesive stretch removable article being removed by stretching. *See, e.g.*, Specification, p. 2, lines 11-26. That Korpman does not recognize this problem is evident where it indicates that the rectangular tapes disclosed therein provide "ouchless" removal from skin. *See, e.g.*, Korpman, Col. 1, lines 41-50. As a result, one of ordinary skill in the art would not find any motivation to provide the tapes of Korpman in any other shape because the disclosed construction already (theoretically) provides for "ouchless" removal.

In view of the above, Applicants respectfully submit that the motivation requirement for a *prima facie* case of obviousness has not been met. In addition, the combination of Korpman and Visintainer does not teach or suggest all of the limitations recited in rejected claims 1-3, 5-7, 24-27, and 37-40.

Claim 59 recites "applying a stretch removable pressure sensitive adhesive to a major surface of the backing." The application further defines "stretch removable" pressure sensitive adhesive as follows:

"Stretch removable" means that a pressure sensitive adhesive or article, when pulled and elongated (preferably from a substrate surface at a rate of 30 centimeters/minute and at an angle of no greater than 45°) detaches from a substrate surface without significant damage to the substrate surface (e.g., tearing), and without leaving a significant residue, preferably that which is visible to the unaided human eye on the substrate.
Specification, p. 9, lines 18-23.

In other words, the meaning of the phrase "stretch removable pressure sensitive adhesive" requires removal "without leaving a significant residue" on a surface. Korpman does not teach or suggest this feature. In fact, Korpman is silent as to whether any adhesive is removed along with the backing of the tapes disclosed therein.

For the above reasons, Applicants respectfully submit that the combination of Korpman and Visintainer does not support a *prima facie* case of obviousness with respect to claim 59. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Claims 60 & 61:

Claims 60 and 61 were rejected under 35 U.S.C. §103(a) as being unpatentable over Korpman (U. S. Patent No. 4,024,312) in view of Curad, Extreme Shapes™, Bandages for fingertip, elbow/knee, or knuckle, Beiersdorf Inc., Wilton, CT 06897 (2000)(Photocopy of Packaging) ("CURAD"). Applicants respectfully disagree with this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves or the knowledge generally available to one skilled in the art to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations (M.P.E.P §2143).

It is indicated in the Office Action that the recited geometric limitations are "an obvious design choice" that do not support patentability "[a]bsent a teaching as to the criticality" of the limitations. Applicants respectfully submit that the application as filed does provide the requested "criticality" to support patentability.

It is noted in the application that the "tapered terminal portions may provide control over the release properties of the article to a surface, e.g., skin. Such control may be especially helpful as the stretch removable adhesive article reaches the point of complete detachment from a surface. It is at that point that the adhesive forces on the substrate may be acting in shear and it may be desired to limit shear forces on some substrates, e.g., skin and other shear-sensitive surface." Specification, p. 2, lines 21-26. Furthermore, in the description of the features recited in these claims (*see, e.g.*, Specification, p. 42, line 29 through p. 43, line 22), the features recited in the claims are described as "preferred" - thus indicating that the recited features may be considered critical to attaining the advantages of the invention.

Finally, these statements all have the benefit of the declaration of inventorship indicating

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that the inventor "reviewed and understand" the specification and the claims. The inventor also declared "that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true." *Declaration, Power of Attorney, and Petition*, (signed August 9, 2001). As a result, the criticality of these features is established within the application as filed.

In view of the above, Applicants respectfully submit that the combination of Visintainer and Korpman does not support a *prima facie* case of obviousness with respect to claims 1-3, 5-7, 24-27, and 37-40. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

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Summary

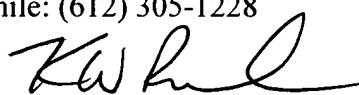
It is respectfully submitted that the pending claims 1-61 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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CERTIFICATE UNDER 37 CFR §1.10:

"Express Mail" mailing label number: EV 073 686 134 US Date of Deposit: 17 September 2003

The undersigned hereby certifies that the Transmittal Letter and the paper(s) and/or fee(s), as described hereinabove, are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: Rachel England-Gebhardt
Name: Rachel Englandi - Gebhardt
